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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/423,207	11/03/1999	THORBJORN ANDERSSON	027650-836	6484

7590

12/26/2001

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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

21

DATE MAILED: 12/26/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

A-S-11

**Advisory Action**

Application No.

09/423,207

Applicant(s)

ANDERSSON ET AL.

Examiner

Marc A Patterson

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-4.

Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See attachment

**ADVISORY ACTION**

*Applicant's arguments filed December 11, 2001 have been fully considered but have not been found to be persuasive.*

1. Applicant argues on page 3 of Paper No. 10 that amended Claim 1 overcomes the previous 35 U.S.C. 112, second paragraph rejection. However, the amended claim does not define the density of the second ductile polymer component (the second ductile polymer component, as the claim reads, is selected from the group consisting of density polyethylene and propylene); the amendment therefore raises a new issue, which to be completely addressed would require further search and consideration, and the amendment has therefore not been entered.

Applicant also argues, on page 7, that the combination of Kohn et al. and Nakagawa et al. is improper because the intermediate foamed layers of both Kohn et al. and Nakagawa et al. consist of only one polymer component. However, neither Kohn et al. nor Nakagawa et al. teaches that the intermediate layer disclosed only consists of one polymer layer; Kohn et al., in fact, teach that the foamed layer of their invention is a polyolefin, such as polypropylene, polyethylene, or their copolymerides (column 1, lines 66 – 67; column 2, lines 1 – 5); an intermediate foamed layer which contains all three components therefore reads on Kohn et al.

Applicant also argues, on page 7, that the combination of Kohn et al. and Nakagawa et al. is improper because the prior art does not suggest the desirability of combining the intermediate layer of Kohn et al. with the intermediate layer of Nakagawa et al. to arrive at the two – component intermediate layer of the claimed invention. However, if the desirability of the intermediate layer of Kohn et al. is suggested by Kohn et al., and the desirability of the

Art Unit: 1772


intermediate layer of Nakagawa et al. is suggested by Nakagawa et al., the desirability of an intermediate layer which combines the properties (and therefore the components) of both intermediate layers is clearly suggested by the prior art.

*Conclusion*

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-2364. FAX communications should be sent to (703) 305-3599. FAXs received after 4 P.M. will not be processed until the following business day.

M.A.P.

*m-a-p.*

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772  
12/20/01